

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On September 23, 2020 appellant, then a 55-year-old equipment specialist (electronics), filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment. He indicated that he had passed a hearing test prior to deployment and failed it upon “redeployment.” Appellant stated that he first became aware of his condition and its relation to his federal employment on September 17, 2019. He did not stop work.

In support of his claim, appellant submitted an audiogram dated September 17, 2019 from Jessica Boss, an audiologist. OWCP also received a position description of appellant’s duties as an equipment specialist (electronics).

In a development letter dated October 6, 2020, OWCP advised appellant that the evidence of record was insufficient to establish his claim. It advised regarding the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant’s allegations. It afforded both parties 30 days to respond.

In a November 6, 2020 response to OWCP’s questionnaire, R.M., a supervisor for the employing establishment, confirmed that appellant’s statements were accurate and suggested that appellant’s hearing loss occurred while he was deployed to Afghanistan in the line of duty.

By decision dated November 20, 2020, OWCP denied appellant’s claim as he had not established that the events occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 2, 2020 appellant requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

By letter dated February 5, 2021, an OWCP hearing representative advised appellant that a telephonic hearing would be held on March 10, 2021 at 9:15 a.m., Eastern Standard Time (EST). He provided appellant with a toll-free number and a pass code for the telephonic hearing. Appellant did not appear for the telephonic hearing.

By decision dated March 22, 2021, OWCP found that appellant had failed to appear at the oral hearing and had abandoned his request. It indicated that he received 30-days advanced notice of the hearing scheduled for March 10, 2021 and found that there was no evidence that he had contacted OWCP either prior to or subsequent to the scheduled hearing to request a postponement or explain his failure to appear.

### **LEGAL PRECEDENT**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought. Unless otherwise directed in writing by the claims examiner, an OWCP hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the

scheduled date.<sup>2</sup> OWCP has the burden of proving that it mailed notice of the scheduled hearing to a claimant.<sup>3</sup> Section 10.622(f) of OWCP's regulations provides that a claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled.<sup>4</sup> Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.<sup>5</sup> Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision finding that the claimant abandoned the request for a hearing.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

The record establishes that on February 5, 2021, in response to appellant's request for an oral hearing, a hearing representative properly mailed a notice of the scheduled telephonic hearing scheduled for March 10, 2021 at 9:15 a.m. EST. The hearing representative mailed the notice to appellant's last known address of record and provided instructions on how to participate in the telephonic hearing. Appellant failed to call in for the scheduled telephonic hearing. He did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing.<sup>7</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant abandoned his request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

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<sup>2</sup> *Id.* at § 10.617(b).

<sup>3</sup> *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *A.R.*, Docket No. 19-1691 (issued February 24, 2020).

<sup>4</sup> 20 C.F.R. § 10.622(f).

<sup>5</sup> *Id.*

<sup>6</sup> *T.R.*, *supra* note 3; *A.J.*, Docket No. 18-0830 (issued January 10, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (September 2020).

<sup>7</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board